

are understood to be granted. In which *Service oneris forendi* or of Support, this is singular that it obligeth the Owner of the servient Tenement to act or do something contrary to the Nature of other Services, which consists only in Suffering, or in an Obligation not to do. *l. 15. §. 1. ff. de Servit.* But the Lord Stair (*Inst. Lib. 2. Tit. 7. §. 6.*) will not have this Obligation to arise from the Nature of an express Service, tho' it resemble it, but to be established by the common Custom of Burgh, according to the Nature of a Communio. For the Ground and Roof of a Building of several Stories belonging to different Persons, being common to all; the Owner of the lower Story, stands obliged to uphold it as a Foundation to the higher, and the Proprietor of the latter, to keep it as a Roof and Cover to the former.

2. A Right to discharge Rain from one's House upon his Neighbour's; either in Drops from the Eves, called *servitius stillicidii* or of the Eves-dropping, or in Spouts running thro' a jutting gutter, or thro' a Pipe chap'd on against the Wall called *Servitius fluminis* *§. 1. Inst. de servit.* Therefore where neighbouring Tenements are under no such Services of Eves-dropping or Spouts, every Man ought so to build, as that the Droppings of the Eves, or Water Spouts may fall upon his own. For which End the ancient Roman Custom appointed to leave two Foot and a half free within the March. But in Towns where the building of Houses close together is allowed for common Convenience, the Custom of the Place must be the Rule. *Inst. §. 7. In Robert spots wood (servit. Tit. Barony Burg Customs) says that the walls of two neighbouring Houses should be distant*

3. A Service for Lights, whereby one is intitled either to the free and uninterrupted Enjoyment of the present Lights of his House or may open his own Wall for receiving Light on the Side where his Neighbour's Tenement stands; and hinder his Neighbour from making them useless by building or erecting Shades against them to obstruct such Lights. *l. 9. C. de servit. l. 4. ff. de servit. pred. urb. §. 1. Inst. de servit.* For he who is not subject to this Service, may raise his House as high as he pleases, *quis est calum cupis est solum*; altho' by the said Elevation, he should darken his Neighbour's House, *l. 9. ff. de serv. pred. urb.* If there be no Law in the Place determining the Height of Buildings.

4. A Service against Lights, which intitles one to make Windows in his own Wall; to overlook his Neighbour, and thereby take away his privacy.

5. A Right to fix the Rafters or Beams of one's House, in his Neighbour's Wall to rest upon it. *l. 2. l. 20. ff. eod.* And when it is a Partition Wall, the joint Proprietors have a Right to rest any Thing on it, every one on his own Side; And the same Wall serves reciprocally to two Masters for two Services. But whether the Wall belong to one Master alone, or be a Partition Wall, they ought not to load it otherwise than is reasonable, and according as is regulated by the Service.

(1) Inhabitants distant from one another; that is, Houses be not built full to the side-wall of the other;

Tit. 2.

Concerning personal Services.

A personal Service is a Burden upon one's Land or Tenement directly for the Use and Enjoyment of another Person.

Usufruct, Use, and Habitation, are the personal Services in the Roman Law. Usufruct is a Right to enjoy the Profits of a Thing whereof the Property rests in another, preserving it intire without spoiling or diminishing it. *l. 1. ff. de usufr.* Which we call a *Siferent*. Use is a Right to make Use of a Thing and take out of the Fruits of it in so far as necessary to him who has the Use and his Family, or so much as he may consume on his Wants. *§. 1. Inst. de Usu et Habit.* Habitation is a Right to dwell in a House in Favour of one and his Family. Dr. Lowel (*Inst. jur. Angl. Lib. 2. Tit. 5.*) cannot be positive, that Services of Use and Habitation obtain in England; Altho' he finds nothing in them contrary to the Analogy of the English Law, he thinks them to be granted by special Covenants and Agreements. But it would seem from the Statute of 27 Hen. 8. Cap. 10. that Use is as large in that Law, as Usufruct is in the Civil Law; and that he who hath the Use of Land, hath the Land itself. But such Uses and Rights of Habitations as were among the Romans, take no Place in Scotland. *M'kenzie Inst. Lib. 2. Tit. 9. §. 36.*

Personal Services used in Scotland, are *Siferents*, *Infestments of Annualrent* Ground Fee and Top Annuals, *Infestments of Relief*, *Penfions*, and *Tacks*. *Siferents* being already explained (*Supra Part 2. Book 2. Chap. 3. Tit. 3 & 4.*) it remains, that I treat of the rest of these Services.

Sect. 1.

Of Infestments of Annualrent.

Taking Annualrent or Profit for the Use of Money having been discharged as Usury by the Canon Law; those unfit for Trading, and averse from buying Land, fell into the Practice of acquiring Annualrents out of other Mens Lands, which give Rise to the present Infestments of Annualrent.

An Annualrent is a real Right to a Sum of Money, or Quantity of Victual, issuing yearly out of Lands or Tenements, at one or different Terms. Whence it got the Name of Annualrent; and he or she to whom such a Right belongs, is termed an Annualrenter. Whether Annualrent by Infestment be a distinct Right of Property as Sir George M'kenzie (*Inst. Lib. 2. Tit. 8. §. 2.*) makes it, or only a Service upon the Ground, as Craig (*Feud. Lib. 1. Tit. 50. §. 27.*) would have it, or partly both, as Stair